

OGC 69-0491

20 MAR 1969

OGC Subject:
Legislation, S. 782

The Honorable Sam J. Ervin, Jr., Chairman
Subcommittee on Constitutional Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

My dear Mr. Chairman:

I have received your letters of 4 and 5 March 1969 concerning my request to appear before your Subcommittee in executive session to state my views on S. 782.

As I indicated in my letter of 28 February 1969, I do not feel that I can discuss fully and candidly the ramifications which the bill would have on the Central Intelligence Agency in an open session. Therefore, I respectfully renew my request to meet with your Subcommittee in executive session.

As you know, the Congress, in the provisions of the National Security Act which established the Agency, placed upon the Director of Central Intelligence statutory responsibility for protecting intelligence sources and methods from unauthorized disclosure. This is a heavy responsibility and one which is vitally important to the national security. I believe S. 782 would inhibit my fulfillment of that responsibility by limiting our ability to acquire knowledge about the employees of this Agency, the security of which depends primarily on the loyalty and integrity of its personnel, but beyond this it provides for certain administrative procedures which raise even more serious problems, of which the following are examples:

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Section 1(k) gives any employee the right to counsel or other person of his choice if he is asked to submit to interrogation which could lead to disciplinary action. Such interrogation, in the Central Intelligence Agency, can involve most sensitive information, particularly as to intelligence sources and methods, and this section would permit presence of uncleared and possibly hostile counsel or other representative at the earliest stages.

Section 4 gives any employee or applicant who alleges he is affected or aggrieved by the violation or threatened violation of any provision of the act immediate access to the United States District Court without regard to whether such employee or applicant shall have exhausted any administrative remedies which may be provided by law. Communists, or other subversives acting on their own or on instructions from foreign agents, could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews. There is little doubt that such groups would be quick to recognize and exploit the weapon provided by this section. The mere filing of such complaints let alone a hearing on the merits would involve almost inevitably classified information concerning the Agency and its activities.

Section 5 establishes a Board on Employees' Rights which would have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of the act. This section also gives any person the right to file a complaint with the Board without exhausting administrative remedies, which may have been otherwise provided. This would permit public testimony before this Board in situations which might again involve the most sensitive information. In a Central Intelligence Agency case it might well be that a defendant employee had been ordered by the Director not to provide information on the matter since it was highly classified; thus, we would have a conflict between the Board's authorities and the Director's responsibility for protection of intelligence sources and methods.

These three administrative provisions are, I believe, in clear conflict with my statutory responsibilities. I also consider them unnecessary in this Agency in view of the existing Agency machinery for dealing with the grievances of any employee or applicant for employment.

The solution which appears to be most nearly consistent with the national security is a complete exemption from the bill for the Central Intelligence Agency and for other sensitive agencies similarly situated, such as provided for the Federal Bureau of Investigation in your original bill, S. 1035. We are preparing language, however, which would exempt sensitive agencies, such as the Central Intelligence Agency, from the more troublesome provisions of the bill and will submit our suggestions shortly in accordance with your request.

Sincerely,

~~For~~ Richard Helms

Richard Helms
Director

OGC:LRH:jeb
Distribution
O-Addressee
1-The Director
1-ExDir
1-ER
1-DDS
1-Legislative Counsel
1-General Counsel

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

*Staff
Intg.
20 March*

The Honorable Sam J. Ervin, Jr., Chairman
Subcommittee on Constitutional Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

My dear Mr. Chairman:

I have received your letters of 4 and 5 March 1969 concerning my request to appear before your Subcommittee in executive session to state my views on S. 782.

As I indicated in my letter of 28 February 1969, I do not feel that I can discuss fully and candidly the ramifications which the bill would have on the Central Intelligence Agency in an open session. In addition, as I believe you know, it has been my policy and the policy of those who have preceded me in this position, based in large part on the desires of the committees having legislative oversight over the Agency, not to appear before congressional committees in open session. I, therefore, respectfully renew my request to meet with your Subcommittee in executive session.

As you know, the Congress, in the provisions of the National Security Act which established the Agency, placed upon the Director of Central Intelligence statutory responsibility for protecting intelligence sources and methods from unauthorized disclosure. This is a heavy responsibility and one which is vitally important to the national security. I believe S. 782 would inhibit my fulfillment of that responsibility by limiting our ability to acquire knowledge about the employees of this Agency, the security of which depends

primarily on the loyalty and integrity of its personnel, but beyond this it provides for certain administrative procedures which raise even more serious problems, of which the following are examples:

Section 1(k) gives any employee the right to counsel or other person of his choice if he is asked to submit to interrogation which could lead to disciplinary action. Such interrogation, in the Central Intelligence Agency, can involve most sensitive information, particularly as to intelligence sources and methods, and this section would permit presence of uncleared and possibly hostile counsel or other representative at the earliest stages.

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it was highly classified; thus, we would have a conflict between the Board's authorities and the Director's responsibility for protection of intelligence sources and methods.

These three administrative provisions are, I believe, in clear conflict with my statutory responsibilities. I also consider them unnecessary in this Agency in view of the existing Agency machinery for dealing with the grievances of any employee or applicant for employment.

The solution which appears to be most nearly consistent with the national security is a complete exemption from the bill for the Central Intelligence Agency and for other sensitive agencies similarly situated, such as provided for the Federal Bureau of Investigation in your original bill, S. 1035. We are preparing language, however, which would exempt sensitive agencies, such as the Central Intelligence Agency, from the more troublesome provisions of the bill and will submit our suggestions shortly in accordance with your request.

Sincerely,

Richard Helms
Director

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12 March 1969

MEMORANDUM FOR: Mr. Houston

SUBJECT: Draft Letter from the Director to Senator Ervin

1. First sentence, page 1, suggest reword as follows:

In your letter of 4 March responding to my request for a hearing in executive session in connection with S. 782, you state that the Subcommittee would be happy to arrange an open hearing.

2. Suggest new paragraph following the last paragraph on page 3:

In meeting this responsibility the Agency has, over the years, developed, on the basis of our extensive experience, our knowledge of the objectives and methods of hostile services, and the best professional advice available, an elaborate system of screening and assessing our personnel. On the record to date, I believe this system has served us, and the national interest, well and I must view with the gravest concern any measures which would destroy or seriously hamper the effectiveness of this system.

3. First sentence, page 4, revised to read:

Three provisions of S. 782 are, I believe, in direct conflict with the above-mentioned statutory responsibility to protect intelligence sources and methods.

4. Rewrite next to last paragraph on page 5 as follows:

These three administrative provisions are, I believe, in clear conflict with my above-noted statutory responsibility. More-

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over, I am convinced that in their practical application, these provisions would seriously damage and disrupt channels of command authority and discipline which I think essential in an organization with the important and delicate responsibilities borne by this Agency. Finally, particularly insofar as these provisions grant applicants as well as employees access to Federal courts, I think there is a very real danger that leftist and other dissident groups might recognize and exploit this access by launching a campaign of litigation virtually paralyzing the Agency recruitment program and severely straining its administrative resources.

JOHN M. MAURY
Legislative Counsel

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DISCUSSION WITH SENATOR RICHARD B. RUSSELL RE S. 782

1. Senator Ervin's bill is the same as last year and we believe it would be detrimental to our personnel security program and to operational security generally.
2. Last year, after Senator Russell suggested that the Director talk to Senator Ervin, the Director saw Senator Ervin on 23 July 1968 but made no headway, although the Senator offered to listen to arguments on legal points.
3. On 24 February 1969 Counsel for the Agency presented the legal points thought to be important in line with a memorandum on points of law previously submitted to Senator Ervin but gained no acceptance from Senator Ervin. (Tab A)
4. On 28 February 1969 the Director wrote asking for an opportunity to present his views to Senator Ervin's Subcommittee in executive session. (Tab B)
5. Senator Ervin wrote back on 4 and 5 March 1969 offering only an open session and saying he would grant no exception for the Agency. (Tab C)
- 6. The Director proposes to reply that he can not make a full presentation in open session and that he feels an exception for the Agency is necessary. In view of the policy that has existed that the Agency appears before its parent Subcommittees only in closed session, the Director requests guidance from Senator Russell on the problem thus presented by Senator Ervin. (Tab D)
7. Mr. Henderson in the House is working on a bill which we believe would be acceptable to the Agency.
8. Senator Eastland and Senator McClellan are sympathetic to the Agency's position, also Senators Jackson, Bayh and Stennis.
9. Summary of the Agency's problems with S. 782 given to Mr. Woodruff. (Tab E)
10. Copy of S. 782. (Tab F)
11. Our proposal for amendments to S. 782. (Tab G)
12. Legislative Counsel's conversation with Senator Jackson, Mr. Woodruff, and others re S. 782. (Tab H)